

§ 1718.101

the loan contract appears to be in conflict with provisions of the mortgage, the loan contract shall have precedence with respect to the contractual relationship between the borrower and RUS with respect to such provision. If either document is silent on a matter addressed in the other document, the other document shall have precedence with respect to the contractual relationship between the borrower and RUS with respect to such matter.

(d) *Certain loan contract provisions subject to subsequent rulemaking.* If a loan contract provision imposes an obligation or limitation on the borrower whose interpretation or specification is subject to RUS regulations or the discretion of the Administrator or RUS, such interpretation or specification shall be subject to subsequent rulemaking. Such interpretation or specification of the borrower's obligations or limitations may not exceed the authority granted to the Administrator or RUS in the loan contract provision.

§ 1718.101 Applicability.

(a) *Distribution borrowers.* The provisions of this subpart apply to all distribution borrowers that obtain a loan or loan guarantee from RUS approved on or after January 29, 1996. Distribution borrowers that obtain a lien accommodation or any other form of financial assistance from RUS after January 29, 1996, may be required to execute a new loan contract and new mortgage. Moreover, any distribution borrower may submit a request to RUS that a new loan contract and new mortgage be executed. Within the constraints of time and staff resources, RUS will attempt to honor such requests. Borrowers must first obtain the concurrence of any other mortgagees on their existing mortgage before a new mortgage can be executed.

(b) *Other borrowers.* Borrowers other than distribution borrowers may also submit requests for execution of a new loan contract pursuant to this subpart and a new mortgage pursuant to subpart B of this part. RUS may approve such requests if it determines that such approval is in the government's financial interest. If other mortgagees are on the borrower's existing mortgage, their concurrence would be re-

quired before a new mortgage could be executed.

§ 1718.102 Definitions.

For the purposes of this subpart:

Borrower means any organization that has an outstanding loan made or guaranteed by the Rural Utilities Service (RUS) or its predecessor, the Rural Electrification Administration, for rural electrification, or that is seeking such financing.

Distribution borrower means a borrower that sells or intends to sell electric power and energy at retail in rural areas, the latter being defined in 7 CFR 1710.2.

Loan documents means the mortgage (or other security instrument acceptable to RUS), the loan contract, and the promissory note entered into between the borrower and RUS.

§ 1718.103 Loan contract provisions.

Loan contracts executed pursuant to this subpart shall contain such provisions as RUS determines are appropriate to further the purposes of the RE Act and to ensure that the security for the loan will be reasonably adequate and that the loan will be repaid according to the terms of the promissory note. Such loan contracts will contain provisions addressing, but not necessarily limited to, the following matters:

(a) Description of the purpose of the loan;

(b) Specification of the interest to be charged on the loan, including the method for determining the interest rate if it is not fixed for the entire term of the loan;

(c) Specification of the method for repaying the loan principal, including the final maturity of the loan;

(d) The conditions under which the loan may be prepaid before its maturity date, including but not limited to requirements regarding the prepayment of loans made concurrently by RUS and another secured lender;

(e) The method for making scheduled payments on the loan;

(f) Accounting principles and system of accounts, and RUS authority to approve the accountant used by the borrower;

(g) The method and time period for advancing loan funds and the conditions precedent to the advance of funds;

(h) Representations and warranties by the borrower as a condition of obtaining the loan, including but not limited to: the legal authority of the borrower to enter into the loan contract and operate its system; that the loan documents will be a legal, valid and binding obligation of the borrower enforceable according to their terms; compliance of the borrower in all material respects with all federal, state, and local laws, regulations, codes, and orders; existence of any pending or threatened legal actions that could have a material adverse effect on the borrower's ability to perform its obligations under the loan documents; the accuracy and completeness of all information provided by the borrower in the loan application and with respect to the loan contract, and the existence of any material adverse change since the information was provided; and the existence of any material defaults under other agreements of the borrower;

(i) Representations, warranties, and covenants with respect to environmental matters;

(j) Reports and notices required to be submitted to RUS, including but not limited to: annual financial statements; notice of defaults; notice of litigation; notice of orders or other directives received by the borrower from regulatory authorities; notice of any matter that has resulted in or may result in a material adverse change in the condition or operations of the borrower; and such other information regarding the condition or operations of the borrower as RUS may reasonably require;

(k) Annual written certification that the borrower is in compliance with its loan contract, note, mortgage, and any other agreement with RUS, or if there has been a default in the fulfillment of any obligation under said agreements, specifying each such default and the nature and status thereof;

(l) Requirement that the borrower design and implement rates for utility services to meet certain minimum coverage of interest expense and/or debt service obligations;

(m) Requirement that the borrower maintain and preserve its mortgaged property in compliance with prudent utility practice and all applicable laws, which may include certain specific actions and certifications set forth in the borrower's loan contract or mortgage;

(n) Requirement that the borrower plan, design and construct its electric system according to standards and other requirements established by RUS, and if directed by the Administrator, that the borrower follow RUS planning, design and construction standards and requirements for other utility systems constructed by the borrower;

(o) Limitations on extensions and additions to the borrower's electric system without approval by RUS;

(p) Limitations on contracts and contract amendments that the borrower may enter into without approval by RUS;

(q) Limitations of the transfer of mortgaged property by the borrower;

(r) Limitations on dividends, patronage refunds, and cash distributions paid by the borrower;

(s) Limitations on investments, loans, and guarantees made by the borrower;

(t) Authority of RUS to approve a new general manager and to require that an existing general manager be replaced if the borrower is in default under its mortgage, loan contract, or any other agreements with RUS;

(u) Description of events of default under the loan contract and the remedies available to RUS;

(v) Applicability of state and federal laws;

(w) Severability of the individual provisions of the loan documents;

(x) Matters relating to the assignment of the loan contract;

(y) Requirements relating to federal laws and regulations, including but not limited to the following matters: area coverage for electric service; civil rights and equal employment opportunity; access to buildings and other matters relating to the handicapped; design and construction standards relating to earthquakes; the National Environmental Policy Act of 1969 and

§ 1718.104

other environmental laws and regulations; flood hazard insurance; debarment and suspension from federal assistance programs; and delinquency on federal debt; and

(z) Special requirements applicable to individual loans, and such other provisions as RUS may require to ensure loan repayment and reasonably adequate loan security.

§ 1718.104 Availability of model loan contract.

Single copies of the model loan contract (RUS Informational Publication 1718 C) are available from the Rural Utilities Service, United States Department of Agriculture, Washington, DC 20250-1533. This document may be reproduced.

APPENDIX A TO SUBPART C OF PART 1718—MODEL FORM OF LOAN CONTRACT FOR ELECTRIC DISTRIBUTION BORROWERS

LOAN CONTRACT

TABLE OF CONTENTS

RECITALS

ARTICLE I—DEFINITIONS

ARTICLE II—REPRESENTATIONS AND WARRANTIES

Section 2.1. Representations and Warranties.

ARTICLE III—LOAN

Section 3.1. Advances.

Section 3.2. Interest Rate and Payment.

Section 3.3. Prepayment.

ARTICLE IV—CONDITIONS OF LENDING

Section 4.1. General Conditions.

Section 4.2. Special Conditions.

ARTICLE V—AFFIRMATIVE COVENANTS

Section 5.1. Generally.

Section 5.2. Annual Certificates.

Section 5.3. Simultaneous Prepayment of Contemporaneous Loans.

Section 5.4. Rates to Provide Revenue Sufficient to Meet Coverage Ratios Requirements.

Section 5.5. Depreciation Rates.

Section 5.6. Property Maintenance.

Section 5.7. Financial Books.

Section 5.8. Rights of Inspection.

Section 5.9. Area Coverage.

Section 5.10. Real Property Acquisition.

Section 5.11. “Buy American” Requirements.

Section 5.12. Power Requirements Studies.

Section 5.13. Long Range Engineering Plans and Construction Work Plans.

Section 5.14. Design Standards, Construction Standards, and List of Materials.

Section 5.15. Plans and Specifications.

7 CFR Ch. XVII (1–1–08 Edition)

Section 5.16. Standard Forms of Construction Contracts, and Engineering and Architectural Services Contracts.

Section 5.17. Contract Bidding Requirements.

Section 5.18. Nondiscrimination.

Section 5.19. Financial Reports.

Section 5.20. Miscellaneous Reports and Notices.

Section 5.21. Special Construction Account.

Section 5.22. Additional Affirmative Covenants.

ARTICLE VI—NEGATIVE COVENANTS

Section 6.1. General.

Section 6.2. Limitations on System Extensions and Additions.

Section 6.3. Limitations on Changing Principal Place of Business.

Section 6.4. Limitations on Employment and Retention of Manager.

Section 6.5. Limitations on Certain Types of Contracts.

Section 6.6. Limitations on Mergers and Sale, Lease or Transfer of Capital Assets.

Section 6.7. Limitations on Using non FDIC-insured Depositories.

Section 6.8. Limitation on Distributions.

Section 6.9. Limitations on Loans, Investments and Other Obligations.

Section 6.10. Depreciation Rates.

Section 6.11. Historic Preservation.

Section 6.12. Rate Reductions.

Section 6.13. Limitations on Additional Indebtedness.

Section 6.14. Limitations on Issuing Additional Indebtedness Secured Under the Mortgage.

Section 6.15. Impairment of Contracts Pledged to RUS.

Section 6.16. Additional Negative Covenants.

ARTICLE VII—DEFAULT

Section 7.1. Events of Default.

ARTICLE VIII—REMEDIES

Section 8.1. Generally.

Section 8.2. Suspension of Advances.

ARTICLE IX—MISCELLANEOUS

Section 9.1. Notices.

Section 9.2. Expenses.

Section 9.3. Late Payments.

Section 9.4. Filing Fees.

Section 9.5. No Waiver.

Section 9.6. Governing Law.

Section 9.7. Holiday Payments.

Section 9.8. Rescission.

Section 9.9. Successors and Assigns.

Section 9.10. Complete Agreement; Amendments.

Section 9.11. Headings.

Section 9.12. Severability.

Section 9.13. Right of Setoff.

Section 9.14. Schedules and Exhibits.

Section 9.15. Prior Loan Documents.

Section 9.16. Authority of Representatives of RUS.

Section 9.17. Term.

Schedule 1